

Appl. No. 10/608,593
Response to Election/Restrictions of January 14, 2008

RECEIVED
CENTRAL FAX CENTER
FEB 05 2008

Remarks/Arguments

a. Claims 1-35 are pending and are subject to restriction and/or election requirement. In the Office Action dated January 14, 2008 the Examiner indicated that the pending claims are subject to restriction to one of the following inventions under 35 U.S.C. §121:

I. Claims 1-10 and 22-27 drawn to controlling the electronic device according to a keypad data, classified in class 455, subclass 420.

II. Claims 11- 21 and 28-35 drawn to decoding a control message to obtain and execute control commands that correspond to a conversion of the voiced instructions by the remote agent, classified in class 455, subclass 563.

In view of the comments below, Applicant respectfully requests that the Examiner reconsider the present application and withdraw the restriction / election requirement regarding the pending claims.

b. Pursuant to the requirement under 37 CFR §1.143, Applicant provisionally elects (elects with traverse) the invention defined by claims 1 – 10 and 22-27 and requests reconsideration / withdrawal of the restriction requirement pursuant to the provisions of that section. Applicant respectfully submits that even if *arguendo* claims 1-35 define distinct inventions there is no undue burden on the Examiner under the circumstances and thus the minimum requirements for a proper restriction have not been satisfied.

Appl. No. 10/608,593

Response to Election/Restrictions of January 14, 2008

c. The present application concerns methods and apparatus, e.g., electronic devices, systems, etc. for controlling or assisting with controlling an electronic device, e.g., communication devices. The application discloses and claims various embodiments of the invention, such as a method of controlling a device (claims 1-10), a communication unit utilizing remote assistance (claims 11-21), a system for controlling a communication unit (claims 22-27), and a system in a communication unit for utilizing remote assistance (claims 28-35).

d. The Examiner has concluded that the various embodiments discussed and as claimed are patentably distinct inventions and issued a restriction requirement in accordance with 35 U.S.C. §121 ("If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions") requiring that Applicant make at least a provisional election of the inventions defined by claims 1-10 and 22-27 or claims 11-21 and 28-35. Applicant has complied (electing with traverse claims 1-10 and 22-27) with these requirements in accordance with 37 CFR §1.143 at paragraph b above.

The Examiner maintains that the inventions are distinct each from the other because "Inventions I and II are directed to related a control message" citing the provisions of MPEP §806.05G. The Examiner further states "... the inventions as claimed are controlling the electronic device according to a keypad data and decoding a control message to obtain and execute control commands that correspond to a conversion of the voiced instructions by the remote agent. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants. Because these inventions are independent or distinct for the reasons given above and there would be a serious

Appl. No. 10/608,593

Response to Election/Restrictions of January 14, 2008

burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.”

e. Applicant respectfully disagrees with the Examiner’s issuance of a restriction requirement. Applicant notes that 37 CFR 1.142 allows a requirement for restriction to be made at any time before a final action. Even though issuing a restriction requirement under these circumstances is not forbidden, the Examiner must still satisfy the minimum criteria for restriction of invention as outlined in the MPEP. Applicant further respectfully notes that MPEP §803 minimally requires that in order for a restriction to be proper not only must the inventions be independent or distinct, but also there must be a serious burden on the Examiner. Specifically in relevant part, MPEP §803 states:

“If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”

Even if *arguendo* the separate groupings of the claims represent separate inventions, continued prosecution of the entire application is entirely appropriate, given the present circumstances and a failure of the Examiner to show or support the necessary assertions of undue (serious) burden, which is required to issue and maintain a proper restriction requirement.

While the Examiner alleges that the inventions as grouped above require different fields of search, Applicant respectfully submits that any search for the respective elements of claims 1-10 and 22-27 will necessarily result in finding the relevant art for claims 11- 21 and 28-35.

Appl. No. 10/608,593

Response to Election/Restrictions of January 14, 2008

Basically the inventions defined by claims 1-10 and 22-27 while differing in scope are variations of the invention defined by claims 11-21 and 28-35 or vice-a-versa. All claims necessarily deal with facilitating or assisting with control of an electronic device, e.g., communication unit. Additionally and for example, an examination of claim 6 and 7 would necessarily find the relevant art for control message elements in claim 11 (or examination of claim 20 would find keypad elements of claim 1). Similar analysis of other claims in the groupings will show similar features within the groupings.

Since the Examiner is responsible for searching for all features of claims 1-10 and 22-27 and searching in all relevant fields and applying the resultant art on the merits, there is no incrementally serious burden associated with the search as a search of the art for the features of claim 1-10 and 22-27 will also find the relevant art for claims 11-21 and 28-35. While the Examiner maintains that a different field of search is required for the different grouping of claims, Applicant having reviewed the various claims within Group I – Group II is puzzled as to how a search for the elements of one Group could possibly overlook the elements of the other Groups.

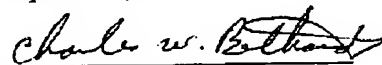
In view of the above comments, Applicant respectfully submits that continuing prosecution on the merits for the entire set of claims is not an incrementally serious burden. Thus in view of the lack of or any showing of or reasoned support for some serious burden, Applicant respectfully submits that the restriction requirement in this instance is clearly improper.

Appl. No. 10/608,593
Response to Election/Restrictions of January 14, 2008

Given the absence of serious incremental burden and that the inventions of the separate claims are variations of other claims, Applicant requests that the Examiner reconsider and withdraw this restriction requirement and continue the examination of the application and pending claims 1-35 on the merits.

Although it is not anticipated that any fees are due or payable, the Commissioner is hereby authorized to charge any fees that may be required to Deposit Account No. 50-3435.

Respectfully submitted,



Charles W. Bethards
Reg. No. 36,453

Law Office of Charles W. Bethards, LLP
P.O. Box 1622
Colleyville, Texas 76034
Phone (817) 581-7005
Fax (817) 281-7136
Customer No. 51874